

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
CITIZENS UTILITY BOARD,)
)
vs.) No. 04-0034
)
NICOR SOLUTIONS, LLC and NICOR)
GAS COMPANY,)
)
Complaint requesting the ICC to)
order Nicor Solutions to cease and)
desist misleading marketing of gas)
offering.)

Chicago, Illinois
July 28, 2004

Met pursuant to notice at 10:00 a.m.

BEFORE:

MR. GLENNON DOLAN, Administrative Law Judge.

1 APPEARANCES:

2 MR. STEPHEN WU
3 208 South LaSalle Street, Suite 1760
4 Chicago, Illinois 60604
5 Appearing for CUB;

6 SONNENSCHN EIN NATH & ROSENTHAL, by
7 MR. MICHAEL GUERRA and
8 MS. SARAH A. NAUMER
9 8000 Sears Tower
10 Chicago, Illinois 60606
11 Appearing for Nicor;

12 MR. VLADAN MILOSEVIC
13 160 North LaSalle Street, Suite C-800
14 Chicago, Illinois 60601
15 Appearing for Staff.

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21 SULLIVAN REPORTING COMPANY, by
22 Tracy L. Overocker, CSR

1 JUDGE DOLAN: By the power and authority of
2 the Illinois Commerce Commission, I call
3 Docket No. 04-0034, Citizens Utility Board versus
4 Nicor Solutions, LLC and Northern Illinois Gas
5 Company doing business as Nicor Gas Company, a
6 complaint requesting the ICC to order Nicor
7 Solutions to cease and desist misleading
8 marketing of gas offerings to order.

9 Would the parties please identify
10 themselves for the record.

11 MR. MILOSEVIC: On behalf of Staff of the
12 Illinois Commerce Commission, Vladan Milosevic,
13 160 North LaSalle, Suite, C-800, Chicago,
14 Illinois, 60601. My phone number is
15 (312)793-8184.

16 MR. WU: On behalf of the Citizens Utility
17 Board, Stephen Wu, 208 South LaSalle Street,
18 Suite 1760, Chicago, Illinois, zip code 60604.

19 MR. GUERRA: On behalf of Nicor Solutions and
20 Nicor Gas, Michael Guerra and Sarah Naumer of the
21 law firm Sonnenschein Nath & Rosenthal, 8000
22 Sears Tower, Chicago, Illinois 60606.

1 JUDGE DOLAN: Let the record reflect there are
2 no other appearances.

3 A discussion has taken place off of the
4 record concerning this matter. There's been a
5 few motions filed in the recent weeks which need
6 to be addressed by me and I think that will
7 somewhat set the direction of this case. I
8 believe we're looking at four different motions
9 here. We have a motion to stay discovery for
10 Nicor Gas and Solutions or just Gas?

11 MS. NAUMER: Just Gas.

12 JUDGE DOLAN: Okay. We have a motion for a
13 joint request for a final and appealable written
14 order of Nicor Solutions, LLC and Northern
15 Illinois Gas Company. We have a motion of
16 Citizens Utility Board for leave to file a second
17 amended complaint instanter and there was a
18 motion to compel discovery.

19 MR. WU: An answer.

20 JUDGE DOLAN: Oh, an answer.

21 MR. WU: From Nicor Solutions.

22 JUDGE DOLAN: From Nicor Solutions. All

1 right.

2 I guess until we have all of those
3 motions ruled on, we're kind of in limbo with
4 this case as to what direction we are going to
5 move forward with. I will certainly do what I
6 can to file a response -- or file, you know,
7 orders concerning the motions.

8 Is there any comments from the parties
9 while we're on the record?

10 MR. GUERRA: Judge, as I stated off the
11 record, I think we basically have two
12 alternatives here -- our position is that we do.
13 One would be to defer ruling on the motion for
14 leave to amend and have you enter an interim
15 order, which would basically set forth basis for
16 jurisdiction and some scope, you know, what the
17 scope of the proceeding is, you know, for
18 example, looking at questions -- or answering
19 questions as to whether the Commission feels that
20 it is piercing the -- is asserting jurisdiction
21 by piercing the corporate veil or whether it's
22 deeming solutions on AGS. I mean, it's not

1 perfectly clear right now from the Commission's
2 ruling. So we feel that that's one alternative
3 and that interim order would really serve as a
4 guideline going forward in dealing with the new
5 amended complaint and any motions to dismiss that
6 are filed.

7 I guess the other alternative -- and
8 we're basically indifferent as to which
9 alternative we would go with -- the other one
10 would be that, you know, an amended complaint
11 starts the proceeding all over again and we would
12 file motions to dismiss, essentially, objecting
13 to, again, jurisdiction, whether the
14 complaints -- whether the complaint filed states
15 a cause of action and also whether the relief
16 being sought is something the Commission can even
17 grant.

18 So, you know, we can start all over
19 again, that's certainly an alternative and, in
20 fact, that alternative does make sense because
21 we're -- we are going to file motions to dismiss
22 the new complaint either way. I mean, the

1 Company feels it's going to have to preserve its
2 objections to the complaint.

3 So, you know, with regard to discovery,
4 we understand that there's a motion pending but
5 at this point, our position is it doesn't really
6 make sense to go forward without some guidance as
7 to what the scope of the proceeding is. We feel
8 that that would, perhaps, limit some pleading
9 because as it stands, if we were ordered to go
10 forward with discovery, there certainly will be
11 objections based on what we -- how we interpret
12 the Commission's decision on jurisdiction.

13 MS. NAUMER: Your Honor, if I could add just
14 one point. To the extent that we go forward with
15 the option of going forward with the amended
16 complaint and filing pleadings thereon, it would
17 be procedurally backwards to be conducting
18 discovery before motions to dismiss have been
19 addressed, before answers have been filed with
20 regard to the new amended complaint.

21 JUDGE DOLAN: Okay. Mr. Wu?

22 MR. WU: We at CUB will certainly defer to

1 your guidance on how to proceed with the matter.
2 I would like to point out if -- if we pursue an
3 option of essentially starting the case over with
4 motions to dismiss, Nicor Solutions and Nicor Gas
5 are certainly entitled to state their position.
6 But those arguments are likely to be duplicative
7 of the motions that have already been filed and
8 decided upon to a large extent. I would just ask
9 that -- given that high probability that if this
10 option is pursued that we go forward on some kind
11 of expedited fashion. I point out that the
12 complaint was filed in January and we are looking
13 at, you know, late August -- I'm sorry, late
14 August, early September for the next opportunity
15 to move this case along when you've indicated
16 you'll likely have reached some conclusions on
17 the motions. So that's one thing.

18 The second thing is with regard to
19 staying discovery, you know, Nicor Gas has
20 already answered in this case to the prior
21 complaint. The questions didn't change and if
22 there are, you know, concerns about burden with

1 regards to Nicor Gas, you know, we at CUB stand
2 ready to work with them on how to potentially
3 narrow the scope of discovery and move the case
4 along while still getting us the information
5 necessary.

6 JUDGE DOLAN: Okay. Staff?

7 MR. MILOSEVIC: Staff is really indifferent
8 how we will proceed. We will proceed subject to
9 your ruling in this matter in either case that
10 they propose.

11 JUDGE DOLAN: Now, the only thing I guess I
12 have to find out as far as entering an interim
13 order, I don't know, Dick, maybe you may know
14 this; but if I enter an interim order, does it
15 have to be then approved by the Commission? I
16 mean, that's my only -- I'm not sure, so it would
17 have to be. Yeah, so it would probably have to
18 go before the Commissioners and they would have
19 to make sure that they're comfortable with
20 entering that order. So I certainly, you know,
21 am willing to do that and I think my thought
22 would be, then, to, you know give both Nicor and

1 Staff, you know, 15 days from the filing of the
2 amended complaint to file a response to it just
3 so procedurally we keep everything moving along.

4 MR. GUERRA: A response to the motion for
5 leave to amend or a response to the complaint?

6 JUDGE DOLAN: No, to the motion.

7 MR. GUERRA: To the motion, okay.

8 JUDGE DOLAN: Because obviously you will have
9 an opportunity to respond to any motion that's
10 filed under the rules and then, you know, CUB
11 would have an opportunity to reply to your
12 responses.

13 The other matter I think it might, you
14 know, I don't know what Nicor's motion would be,
15 but it might be in your best interest to try to
16 discuss with Mr. Wu if there is some discovery
17 that Nicor can respond to at this point and try
18 to have the parties work out, you know, the
19 discovery rather than having me try to deal with
20 all of the issues which, you know, you've
21 indicated that there's some that you might be
22 able to respond to and some that could be

1 burdensome on the parties. So I would say at
2 this point that might be in your best interest to
3 have the parties try to work out the discovery
4 issues and then if you can't get to it, then we
5 can bring that forward and then...

6 MR. GUERRA: Judge, if I can clarify one thing
7 I said. When I gave you two alternatives I said
8 that the second alternative would be essentially
9 starting over.

10 JUDGE DOLAN: Mm-hmm.

11 MR. GUERRA: I do feel that under -- it is our
12 position that a new amended complaint does start
13 everything over. But with the second is
14 alternative, at least we would have in hand what,
15 you know, the Commission had already done through
16 that point. So if we had to raise a motion -- a
17 motion to dismiss, which I think we're entitled
18 to do, we might incorporate the fact that we
19 maybe object to, don't agree with what the
20 Commission had done but we still -- I don't want
21 to waive that argument that we aren't starting
22 over. I think with an amended complaint, you are

1 essentially starting over.

2 JUDGE DOLAN: Okay.

3 MR. WU: Judge, complaints are amended all the
4 time in proceedings and they don't start the
5 clock over, in essence, every time they're
6 amended and so...

7 JUDGE DOLAN: Okay. Like I said, I'll
8 certainly take that under advisement in granting
9 a ruling on the motion, let's put it that way.

10 And with that, I think if -- the parties
11 have already agreed that we're going to enter and
12 continue this matter until September 2nd at
13 10:00 a.m.

14 If there's nothing else, then I'll do
15 what I need to do on my end and -- is there
16 anything else to be brought before us?

17 MR. GUERRA: No, your Honor.

18 MR. MILOSEVIC: Nothing from Staff.

19 MR. WU: No.

20 JUDGE DOLAN: Okay. Well, then, we will be
21 entered and continued until September 2nd at
22 10:00 a.m.

1 (Whereupon, the hearing in the
2 above-entitled matter was
3 continued until September 2, 2004
4 at 10:00 a.m.)

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